

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BRIAN HAWKINS,)
)
)
Plaintiff,)
v.) No. 1:17-cv-2575-KBJ
)
)
ROBERT WILKIE, Secretary of)
Veterans Affairs, and)
)
DEPARTMENT OF VETERANS AFFAIRS,)
)
)
Defendants.)
)

CONSENT MOTION TO STAY SUMMARY JUDGMENT BRIEFING

Defendants hereby move for a stay of summary judgment briefing. Plaintiff consents to this request. Defendants state the following in support of this motion.

- 1) Plaintiff – the former Director of the Washington DC VA Medical Center – filed an amended complaint challenging a September 2017 decision by the Department of Veterans Affairs (VA), which removed him from Senior Executive Service and the Civil Service. ECF No. 22. Plaintiff has also filed a motion for partial summary judgment, arguing that the removal decision is (i) arbitrary and capricious, and (ii) unconstitutional. ECF No. 47. Defendants’ response to Plaintiff’s motion is currently due on or before May 16, 2019. Minute Order, May 2, 2019.
- 2) By a letter dated May 14, 2019, VA rescinded the September 2017 decision, stated that back pay will be provided, and assigned Plaintiff to another position in the Senior

Executive Service at the same pay. The position of Director of the Washington DC VA Medical Center is currently occupied.¹

- 3) Notwithstanding the rescission of the challenged decision and the reinstatement of Plaintiff to a position in the Senior Executive Service (with appropriate back pay), Plaintiff has declined to dismiss his suit or withdraw his motion for summary judgment.
- 4) Defendants intend to file a motion to dismiss this case as moot, in light of the rescission and reinstatement with back pay. Defendants plan to lodge their motion on or before May 30, 2019.
- 5) Given the changed circumstances – and their implications for this Court’s jurisdiction – Defendants request that the Court stay briefing on Plaintiff’s motion for summary judgment pending resolution of Defendants’ planned motion to dismiss. A stay would be consistent with the D.C. Circuit’s admonition that “[s]ummary judgment . . . represents a decision on the merits, which courts may render only after jurisdiction has been established.” *Kirkham v. Societe Air France*, 429 F.3d 288, 291 (D.C. Cir. 2005).
- 6) Defendants consulted with Plaintiff regarding his position on this motion. Plaintiff consents to the request for a stay, based on Defendants’ representation that (barring unforeseen circumstances) Defendants will file their motion to dismiss on or before May 30, 2019.

¹ Like a remand under the APA, this rescission does not prohibit the Agency from reaching, at a later time, the same conclusion with respect to the issues underlying the previous decision, if it deems such a conclusion appropriate.

Accordingly, for the reasons stated above, Defendants request a stay of summary judgment briefing pending resolution of Defendants' planned motion to dismiss.

Date: May 14, 2019

Respectfully submitted,

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s/ Justin M. Sandberg

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